

Mississippi Secretary of State
700 North Street P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

AGENCY NAME Mississippi Department of Marine Resources		CONTACT PERSON Joe Jewell	TELEPHONE NUMBER 228-523-4072	
ADDRESS 1141 Bayview Avenue		CITY Biloxi	STATE MS	ZIP 39530
EMAIL Joe.Jewell@dmr.ms.gov	SUBMIT 5-18-2016	Name or number of rule(s): Title 22 Part 1		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES PART 1: Rules and Regulations for Shellfish Harvesting, Tagging, Landing, Unloading, Transporting, Relaying, Management, Area Classification, and Other Shellfish Related Activities in the State, and the Leasing of Territorial Waters under the Jurisdiction of the State of Mississippi. Chapter 5: 100; Chapter 8: 100.01.05; Chapter 11: 100; Chapter 14: 100 & 101; Chapter 17: 103.01.05.04; Chapter 18: 100.04.01, 100.04.02, 102.03.01 and 103.02.05; Chapter 19. Chapter 20 19; Chapter 21 20; Chapter 22 21 and Chapter 23 22.

Specific legal authority authorizing the promulgation of rule: Mississippi Code Ann. § 49-15-15, APA, § 25-43-1.101 *et seq.*

List all rules repealed, amended, or suspended by the proposed rule: Title 22, Part 7: (see above summary description; complete description attached).

ORAL PROCEEDING:

☐ An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____

☒ Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

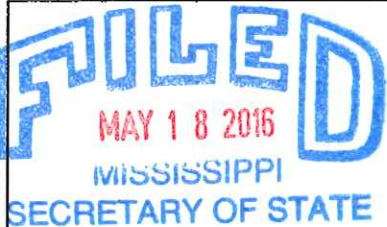
ECONOMIC IMPACT STATEMENT:

☒ Economic impact statement not required for this rule. ☐ Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
_____ Original filing _____ Renewal of effectiveness To be in effect in _____ days Effective date: _____ Immediately upon filing _____ Other (specify): _____	Action proposed: _____ New rule(s) <input checked="" type="checkbox"/> Amendment to existing rule(s) _____ Repeal of existing rule(s) _____ Adoption by reference Proposed final effective date: <input checked="" type="checkbox"/> 30 days after filing _____ Other (specify): _____	Date Proposed Rule Filed: Action taken: _____ Adopted with no changes in text _____ Adopted with changes _____ Adopted by reference _____ Withdrawn _____ Repeal adopted as proposed Effective date: _____ 30 days after filing _____ Other (specify): _____

Printed name and Title of person authorized to file rules: Jamie M. Miller, Executive Director

Signature of person authorized to file rules: *Jamie M. Miller* 5-18-16

OFFICIAL FILING STAMP	DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP	OFFICIAL FILING STAMP
<div style="border: 1px solid black; height: 150px; width: 100%;"></div> Accepted for filing by	<div style="border: 1px solid black; padding: 10px; text-align: center;">  </div> Accepted for filing by <i>#21956</i>	<div style="border: 1px solid black; height: 150px; width: 100%;"></div> Accepted for filing by

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES PART 1: Rules and Regulations for Shellfish Harvesting, Tagging, Landing, Unloading, Transporting, Relaying, Management, Area Classification, and Other Shellfish Related Activities in the State, and the Leasing of Territorial Waters under the Jurisdiction of the State of Mississippi.

Complete description of proposed changes:

Chapter 5: 100 - **Chapter 05 Possession of Illegal (Molluscan) Shellfish** 100 It shall be unlawful for any person, firm or corporation to sell or possess any illegal (molluscan) shellfish as defined in Miss. Code Ann. § 49-15-3 and as provided for in § 49-15-44, as amended.

Chapter 8: 100.01.05 - Sack limits or quotas.

Chapter 11: 100 - It shall be unlawful for any person, firm, or corporation to place or cause to be placed any material or gear used in the catching or taking of saltwater fish, shrimp, crabs or shellfish, with the exception of crab traps or pots, or hook and line fishing or cast nets on any public reef area that has been planted with shells or other cultch material that has not been released or opened to harvest by the MCMR or the MDMR.

Chapter 14: 100 Except as otherwise provided for leased bottoms, All waters north of a line herein described shall be defined as tonging reefs in accordance Miss. Code Ann. § 49-15-3 (j), as amended.

Chapter 14: 101 It shall be unlawful for any person, firm or corporation engaged in the catching of oysters on a tonging reef, as described in Chapter 14.100, to have on board the boat or vessel an oyster dredge, unless that area is temporarily open to dredging for a special management season by order of the MCMR, or allowed for a lease holder harvesting oysters from their lease area by a valid lease harvest permit.

Chapter 17: 103.01.05.04 Area V "A" CONDITIONALLY APPROVED WATERS – When one (1) or more inches of rainfall occurs in any 24 consecutive hours as measured at the Keesler Air Force Base gauge.

Chapter 18: 100.04.01 All waters between a LINE running parallel to and ~~0.25-nautical-mile~~ 250 feet west of the center of the Broadwater Channel and a LINE running parallel to and ~~0.25-nautical-mile~~ 250 feet east of the center of said Channel for the full length of the Broadwater Channel.

Chapter 18: 100.04.02 All waters between a LINE running parallel to and ~~0.25-nautical-mile~~ 250 feet west of the center of Biloxi Channel and a LINE running parallel to and ~~0.25-nautical-mile~~ 250 feet east of the Biloxi Channel for the full length of said Channel.

Chapter 18: 102.03.01 All waters of Biloxi Bay and Davis Bayou, and its' tributaries, ~~south and east of the U.S. Highway 90 Biloxi Bay Bridge enclosed by the following described line;~~ except, for those waters classified as **PROHIBITED or CONDITIONALLY APPROVED.**

~~102.03.01.01 The enclosing line commences at a point on the southeastern most tip of Point Cadet (Coast Guard Point or Point Caddie) in the City of Biloxi, Mississippi, thence, due south to the north shore of Deer Island, thence, following the meanderings of the shoreline southeastward to the east end of Deer Island, thence, running southeastward to Biloxi East Channel Light 14 (Q R 17ft 3M "14" Ra Ref), thence, due east to a point on the shore, thence, northwestward following the meanderings of the mainland shoreline to Marsh Point, thence, eastward along the south shore of Davis Bayou, thence, after enclosing the tributaries on the southern shore of Davis Bayou, to a point on the southern shore of Davis due south of Cedar Point, thence running in a westerly direction following the meanderings of the north shoreline of Davis Bayou across the mouth of Ocean Springs Harbor, Channel, and Bayou (classified as PROHIBITED), thence, continuing westward following the meanderings of the north shore of Biloxi Bay to the north end of the U.S. Highway 90 Biloxi Bay Bridge, thence, southwestward along said Bridge to the point of beginning at said southeastern most tip of Point Cadet (Coast Guard Point or Point Caddie).~~

Chapter 18: 103.02.05 AREA V "A" enclosed by the following described line:

103.02.05.01 Starting at a point 750 feet east of the eastern most point of shoreline at Point Cadet Marina; thence running north easterly along the most direct line through point (Latitude 30.406117 Longitude -88.838433) thence continuing through said point in the most direct line to a point 750 feet from the Ocean Springs front beach shoreline; thence southeasterly, following the meanderings of the shoreline, 750 feet therefrom, to a point 750 feet from the shoreline at a point Latitude 30.3929 Longitude -88.8114; thence running southerly in the most direct line to the northern most point on the shoreline at Marsh Point; thence following the meandering shoreline around Marsh Point in a southeasterly direction to a point on a line drawn from the southernmost tip of Deer Island through Channel Marker 18 in Biloxi Bay East Channel; thence running southwest through Channel Marker 18 to the southernmost tip of the Deer Island shoreline; thence following the northern shoreline of Deer Island, to a point due south of the beginning point 750 feet east of the eastern most shoreline at Point Cadet in Biloxi Bay; thence running due north to said point, the point of beginning.

Chapter 19: ~~Chapter 19~~ On-Bottom Shellfish Leasing Regulations

100-Authority to Lease.

100.01 The MDMR shall accept applications for on-bottom leases within the coastal waters of Mississippi.

100.02 For purposes of this Part, on-bottom lease operations shall be restricted to operations using natural shell or other approved cultch material without employing racks or other support structures.

100.03 Any individual or entity wanting to lease bottoms shall complete a bottom lease application form and submit it to the MDMR Director of Marine Fisheries.

100.03.01 Application forms shall be available from the MDMR in Biloxi, MS.

100.03.02 Applications will be reviewed by the MDMR staff for compliance with application guidelines and completeness.

100.03.03 When all application guidelines are met and requested information is provided, the applicant's intent to lease will be advertised by the MDMR once a week for two consecutive weeks in a newspaper of general circulation in the county of the intended lease area.

100.03.03.01 Costs of the Advertisement will be paid to the MDMR by the original lease applicant.

100.03.04 If the guidelines cannot be met or requested information provided, the applicant may withdraw his application.

100.03.05 Written public comment and sealed bids from other interested parties will be received by the MDMR for a period of fifteen (15) days from the first date of advertisement.

100.03.06 The advertisement will set the date, time and place for opening the sealed bids.

100.03.07 A recommendation will be made to the MCMR to grant or deny the lease application following the fifteen (15) day period and applicant will be notified in writing of the MCMR action on his lease application within 30 days after the MCMR action on the lease proposal.

101-Application Requirements to Lease Bottoms

101.01 All lease applicants and applications must meet the following guidelines:

101.01.01 Each individual, firm, corporation, partnership, association, or other entity requesting to lease must be a resident of the State of Mississippi, or be organized under the laws of the State and registered with the Secretary of State's Office.

101.01.02 Each application for a bottom lease must be for five (5) acres or more, but shall not exceed one hundred (100) acres.

101.01.02.01 The proposed lease area must be contiguous.

101.01.02.02 The proposed lease area must be configured as a square or rectangle with the lease area boundaries meeting at right angles.

101.01.02.03 The length of the proposed lease area cannot be greater than twice the distance of the width of the lease area.

101.01.02.04 No proposed lease areas will be approved that are within one-quarter (0.25) nautical mile of an existing lease area or lease area that is pending final approval.

101.02 Political subdivisions of the State of Mississippi may lease up to one thousand (1,000) acres of bottoms for oyster reef development and such political subdivisions are authorized to permit residents of the State of Mississippi to harvest shellfish from such reefs and charge and receive a fee for each sack of shellfish harvested.

101.02.01 The MCMR shall consider and approve the application of a political subdivision after determining that:

101.02.01.01 No conflicts exist with sites requested in applications filed prior to the application of the political subdivision.

101.02.01.02 A fair and reasonable rental payment has been set.

101.02.01.03 Such lease will ensure the maximum cultivation and propagation of shellfish.

102 No individual, corporation, partnership, or association may lease less than five (5) acres nor more than one hundred (100) acres; provided, however, that in the case of an individual, there shall not be counted towards such limitation any lands leased by a corporation, partnership, or association in which such individual owns ten (10%) percent or less interest, and, in the case of a corporation, partnership, or association, there shall not be counted towards such limitation, any lands leased by an individual stockholder, partner, or associate thereof, who owns ten (10%) percent or less interest in such corporation, partnership, or association.

103 No areas designated as tonging reefs by this Part, nor areas defined as natural reefs by Miss. Code Ann. §49-15-3 (g), as amended, nor areas within the boundaries of riparian property owners defined by Miss. Code Ann. §49-15-9, as amended, shall be leased for oystering by the MCMR.

104 Each application shall be accompanied by a description of the area intended for lease using differential GPS latitude and longitude coordinates, and a map taken from NOAA nautical charts, 11371, 11372, 11373, or 11374, depicting the area to be leased.

105 Each lease application must be accompanied by a bid price per acre in the form of a sealed bid attached to the application. Said bid must be at least five dollars (\$5.00) per acre.

106 Each proposed lease area must be located in waters classified as **APPROVED** or **CONDITIONALLY APPROVED** as described in this Part.

107 Applications shall be submitted to the MDMR Director of Marine Fisheries.

107.01 The time and date each application is received shall be noted on the application.

107.01.01 In the event that applications are received for overlapping areas, the applications shall be processed in order of the earliest receipt and so noted before the MCMR, prior to consideration of each lease application; however, the MCMR is authorized to exercise its discretion as to which bid is the highest responsible bid, and such leases shall be awarded to promote the maximum cultivation and propagation of oysters.

107.01.02 In granting leases, the MCMR may specify any special conditions and limitations under which the lease is granted.

108 Conditions of Leases

108.01 All leases granted by the MCMR shall include the following conditions:

108.01.01 Such leases shall be for a period of one (1) year with the right of the lessee to renew the lease for an additional year, and from year to year, at the same ground rental so long as lessee actively cultivates and gathers shellfish and complies with all provisions specified herein, and all applicable state laws, ordinances, Titles and Parts and public notice requirements, provided that no lease shall be renewed for more than twenty-five (25) years unless it is rebid.

108.01.01.01 In any such rebidding, if the successful bidder is someone other than the lessee, the successful bidder shall, before taking possession of the leased bottoms, pay to the lessee the fair market value of the lessee's shellfish in place as determined by the MCMR.

108.01.01.02 If the lessee is prevented from gathering shellfish from the area leased by storm, or other natural phenomenon, he nevertheless may renew the lease if the bottoms are actively worked by lessee during the remaining term of the lease.

108.01.01.03 No lease may be transferred without prior written approval by the MCMR of the transfer. The MCMR may deny such transfer.

108.02 Appropriate poles, stakes or buoys, constructed of such material as will not be injurious to watercraft, shall mark all leases at the expense of the leaseholder.

108.02.01 Each leaseholder shall mark at least the four (4) corners of each lease with an appropriate marker, and shall maintain all markers.

108.02.02 Each marker shall list the lease number and marker position (i.e. southeast (SE) corner).

108.02.03 Each lessee must file a "Private Aids to Navigation" application with and receive permit approval from the U.S. Coast Guard, for the lease markers, and provide a copy of the permit approval to the MDMR Director of Marine Fisheries prior to final granting of the lease and placement of the markers.

108.03 Each lessee must apply for and receive a permit to alter the bottoms (wetlands permit) from the MCMR and supply a copy of the permit to the MDMR Director of Marine Fisheries, prior to the final granting of the lease.

109 All leases made by the MCMR under the authority of this chapter shall be subject to the paramount right of the State of Mississippi and any of its political subdivisions authorized by law, to promote and develop ports, harbors, channels, industrial or recreational projects, freshwater diversion projects, and all such leases shall contain a provision that in the event such authorized public body shall require the area so leased or any part thereof for such public purposes, that the lease shall be terminated on reasonable notice fixed by the MCMR in such lease.

109.01 On the termination of any lease, the lessees shall have the right to remove any shellfish within the leased area within such time as may be fixed by the MCMR and in accordance with such reasonable rules and regulations as the MCMR may adopt.

109.02 Further, all lease agreements shall contain provisions requiring the lessee to waive any and all claims for damages that may result from any fresh water diversion projects authorized by the State of Mississippi.

110 The MCMR shall cooperate with the Jackson County Port Authority, the Harrison County Development Commission, the Municipal Port Commissions, and other port and harbor agencies, in order that the oyster beds shall not be planted in close proximity to navigable channels.

110.01 The MCMR or lessee shall have no right of action as against any such public body for damages accruing to any natural reef or leased reef by any necessary improvement of such channel in the interest of shipping, commerce, navigation, or other purpose authorized by law.

111 All activities conducted by lessee on the lease area must have prior written approval from the MCMR, the MDMR Executive Director, or his designee in his possession at the time of such activity, and must be done in accordance within the provisions of the lease agreement, all applicable laws of the State of Mississippi, and all MCMR Titles, Parts, regulations, and public notices.

112 All leases shall expire on April 30 of each year.

112.01 All leases leased before or after April 30 of each year shall be prorated from the date of lease to the following April 30.

112.02 All leases leased prior to April 30, 1989 shall expire on the date indicated in the current lease agreement.

112.03 All leases leased after April 30, 1989 shall expire April 30, 1990, provided that said lease shall be prorated from the current date of lease to April 30, 1990, and any unearned balance returned to said lessee.

113 Each lessee shall have the option to renew said lease provided he submits a written application with payment of annual or prorated rental for the subsequent lease period within thirty (30) days of the lease expiration date to the MDMR Director of Marine Fisheries.

~~114 Each lessee shall provide a written summary of lease activity report for the previous lease period upon forms provided by the MDMR within thirty (30) days from the lease expiration date.~~

~~114.01 These forms shall be submitted to the MDMR Director of Marine Fisheries.~~

~~115 Failure to abide by any provision specified herein, in the lease agreement, any applicable laws of the State of Mississippi, or any MCMR Title, Part, regulation, or public notice shall be grounds for immediate termination of the lease agreement.~~

Chapter ~~20~~ 19 Regulations for Relaying Activities

Chapter ~~21~~ 20 Penalties

Chapter ~~22~~ 21 Chapters and Subchapters Declared Separable

Chapter ~~23~~ 22 Administrative Procedures Act